

EDWARD KERSHNER.

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JUNE 10, 1898.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. BUTLER, from the Committee on Naval Affairs, submitted the following

REPORT.

[To accompany H. R. 8838.]

The Committee on Naval Affairs, to whom was referred the bill (H. R. 8838) to restore Edward Kershner to rank and pay as medical inspector, United States Navy, beg leave to submit the following report:

Dr. Kershner was court-martialed and dismissed March 19, 1896, on the following charges:

(1) Violation of a lawful regulation issued by the Secretary of the Navy.

(2) Scandalous conduct tending to the destruction of good morals.

Under the first charge both specifications point to a violation of article 235 of the regulations for the government of the Navy.

The object of this article, as declared in the margin of the Navy Regulations, is to forbid the publication of official documents.

It reads as follows:

ART. 235. All persons belonging to the Navy or employed under the Navy Department are forbidden to publish, or to cause or permit to be published, directly or indirectly, or to communicate by interviews, private letters, or otherwise, except as required by their official duties, any information in regard to the foreign policy of the United States, or concerning the acts or measures of any Department of the Government, or any officer acting thereunder, or any comments or criticisms thereon, or of any official instructions, reports, or letters upon any subject whatever, or to furnish copies of the same to any persons without the permission of the Navy Department.

No person belonging to the Navy or employed under the Navy Department shall act as correspondent of a newspaper without the express authority of the Department, or discuss matters pertaining to the naval service in the public prints, or attempt to influence legislation in respect to the Navy otherwise than through and with the approval of the Department.

Your committee is of the opinion that, literally construed, the foregoing article would prohibit any officer, or any person belonging to the Navy or employed under the Navy Department, from making communications, verbally or in writing, to anybody—wife, mother, child—of anything that went on in the service.

Your committee's construction of the aforesaid article is that it means exactly what it says in the margin—that it is intended to prevent any publication of documents or official work.

Your committee, after careful and thorough examination of the facts and evidence in the case, find that if Dr. Kershner was guilty of a technical violation of this article in having written to his friends, the navy officers mentioned in the specifications, concerning the grave charges preferred against him, it does not seem to have been a serious matter or one that calls for severe punishment under the circumstances, and if any offense was committed it has been abundantly expiated by over two years' punishment of very great severity.

The second charge is—

(2) Scandalous conduct tending to the destruction of good morals.

Under this charge there are two specifications, in substance alike, and they charge Dr. Kershner with knowingly and willfully making a false statement under oath.

This charge grew out of the erroneous alternating of the word "copies" with "verbatim copies" in Dr. Kershner's testimony before the court of inquiry. There was no stenographer present, and the recorder, a young lieutenant who had never performed such duty before, made up the record from crude memoranda of the proceedings at night after adjournment. At the court-martial this record was ruled out as unreliable evidence, although the witnesses for the prosecution were allowed to refresh their memories from it against the objections of the counsel for the accused.

Your committee, after careful and thorough examination of the facts and evidence in the case, find that this charge is not sustained, and that Dr. Kershner should not have been dismissed by reason thereof.

No fair-minded man can desire to see an officer with such a record behind him stricken down and his whole future life blackened by the infliction of the severe punishment and the severe judgment pronounced by the court-martial, and your committee respectfully recommend that the findings of the court-martial by which he was tried be annulled, and that Dr. Kershner be restored to the Navy, in which he had nearly thirty-five years' continuous and honorable service.

The facts are presented as follows:

- (1) A statement of the facts which led up to the court of inquiry.
- (2) The court of inquiry. (See pp. 4, 5.)
- (3) The charges and specifications. (See pp. 5, 10.)
- (4) The court-martial. (See pp. 10, 16.)
- (5) A statement of Dr. Kershner's career in the Navy and subsequent thereto. (See pp. 16, 18.)

#### A STATEMENT OF THE FACTS WHICH LED UP TO THE COURT OF INQUIRY.

At the time charges were preferred against Dr. Kershner, which resulted in his being finally court-martialed and dismissed from the service, he was doing duty as fleet surgeon on board the U. S. S. *New York*, and the fleet, in command of Admiral Meade, was cruising in Southern waters. It appears that two or three times previous to the preferring of the charges questions had arisen between Dr. Kershner and the commanding officer concerning the protection of the fleet against disease and yellow fever, then prevailing in that locality, but it does not appear that Dr. Kershner was at fault, although some irritation was caused the admiral by reason thereof.

While at Barbadoes, on February 24, 1895, a request for a doctor came from a British merchant vessel anchored about half a mile from the town of Birdgetown and the U. S. S. *New York*. Dr. Kershner was directed by the captain to send his junior assistant. Dr. Kershner called the attention of the captain to the danger of this visit spreading contagious or infectious disease among the officers and crew of the American fleet, especially in view of the narrow escape from yellow fever at St. Lucia a few days before. The captain then referred the matter to the admiral, who ordered that the junior assistant should go, and accordingly he visited the vessel referred to, and it afterwards turned out that there was no contagion on that particular vessel.

The calling of the attention of the captain to the danger above referred to was in strict accordance with the Navy Regulations, as follows:

Article 647 says: "He shall make report to the captain concerning the prevention or checking of the disease."

Article 351, paragraph 6, says of the surgeon of the fleet: "It shall be *his duty* to make suggestions concerning the prevention of disease."

For calling the attention of the captain to this danger, as thus required by the Regulations, Surgeon Kershner was reported by the captain in writing to the admiral. The admiral then reported the matter to the Navy Department. His report was a most caustic one, and cast severe strictures upon Surgeon Kershner's "humanity, moral, professional, and official character and professional ability." It was forwarded to the Navy Department February 25, 1895. A few hours previous to the time appointed for the sailing of the mail steamer a copy of this report was furnished Dr. Kershner, in accordance with the Regulations, which provide that a copy of all charges shall be furnished the accused, in order that he may prepare his defense.

At the time that Surgeon Kershner received the copy of the report he was, among his other duties, preparing to send by this same mail steamer an officer whose arm had been amputated. Therefore, in view of the very short time before the sailing of the mail steamer, and in view of his pressing duties, Dr. Kershner could only find time to write hurriedly to the following in his own behalf:

(1) To Surgeon-General Tryon, his superior officer in the Navy Department, to whom he inclosed a verbatim copy of the main indorsement and an imperfect copy of the letters, which he requested the Surgeon-General to place before the Secretary of the Navy, with an explanation of the medical side of the case.

(2) To his family and some of his friends about this very severe attack upon his character.

In the short time at his command he made and inclosed to his family a copy of the salient points of the case, together with a brief outline thereof, but he had not time to make a verbatim copy of the report or the indorsements or to compare the same with the original. It is important to bear this in mind, because of the facts which are stated hereafter.

A few days after these charges had been forwarded to the Navy Department Dr. Kershner addressed a communication to the Department requesting an investigation thereof. In accordance with the regulations, this request went to the captain and then to the Admiral, by whom it had to be forwarded to the Navy Department, each officer having the right to comment thereon. This request was returned to Dr. Kershner with an indorsement containing a threat then and there of court-martial by Admiral Meade. Dr. Kershner returned the paper with an indorsement to the effect that what he requested was a court

of inquiry and not a court-martial, and that this inquiry should be had in the United States, as there the slanders on his character could be more readily refuted. It is presumed this document found its way to the Navy Department through official channels, but its receipt was never acknowledged to Dr. Kershner, nor was the request ever complied with.

On March 23, 1895, there appeared in a New York newspaper the correspondence on the subject just detailed and which had been lodged for probably a fortnight in the Navy Department at Washington.

#### THE COURT OF INQUIRY.

A court of inquiry was ordered by the Secretary of the Navy to determine whether anyone on the ship had furnished to the newspapers this correspondence, and this court sat at Kingston, Jamaica, on April 6, 1895.

Dr. Kershner was a witness before that court of inquiry. He was asked if he had sent verbatim copies of the correspondence to anyone, and a newspaper article of about half a column was placed before him, and he was requested to state if he had sent a verbatim copy of the correspondence that would produce this article. His reply was that he could not testify that he had sent a verbatim copy. Nearly two months had elapsed, and by reason of having visited so many places in the meantime, and his pressing duties, he was unable to state whether he had made a verbatim copy, or a copy of the correspondence in such detail as in the article before him.

He further stated that he did not remember that he had sent a verbatim copy of the whole correspondence to anyone, but that he had sent to Surgeon-General Tryon, at the Navy Department, a verbatim copy of an indorsement by Rear-Admiral Meade upon a certain letter written by the Captain to Admiral Meade. This letter, as before stated, reflected upon Surgeon Kershner, and a copy of the same, together with the indorsement by Admiral Meade, was, as previously stated, furnished Surgeon Kershner.

The specific indorsement, copied verbatim, Surgeon Kershner admitted that he had sent to Surgeon-General Tryon of the Navy, his superior officer, and also that he had written to him fully about the affair.

Surgeon Kershner stated further that he had written more or less fully to his family and friends, and that he had shown the correspondence to several officers of the ship *New York*.

He was told by the court that they were only inquiring as to verbatim copies that could reproduce the newspaper article then before the court. In answer to questions, Dr. Kershner tried to tell the court that he had written and sent an account of the correspondence to friends in the United States, and the court stated it did not want that information.

There was no stenographer for the court of inquiry, but memoranda of the proceedings was made by the recorder, a young lieutenant who had never done such work before, and who made up his record from them at night after the adjournment of the court.

In this record of the court of inquiry the word "copies" was used, and the term "verbatim copies" was also used. This alternating of the word "copies" with "verbatim copies" furnished the hook upon which hung all the subsequent proceedings.

The orders of the Secretary of the Navy convening the court of inquiry defined the only object of the court to be to determine how the records of the Navy Department got into the newspapers, and required



no inquiry as to further matters. Surgeon Kershner testified before the court of inquiry that he had sent a verbatim copy of Admiral Meade's indorsement to Surgeon-General Tryon, and that to his friends he had sent statements of the main facts. He denied specifically that he had sent copies of any kind to the newspapers. The court excluded his explanation, excepting his testimony as to the verbatim copy sent to Surgeon-General Tryon. The record, as made up and forwarded to Washington, made no distinction between "copies" and "verbatim copies." The Department's subsequent action in court-martialing Surgeon Kershner would seem to indicate that it assumed that copies of any kind, or even letters giving condensed intelligence, were subjects included in the investigation of the court of inquiry. This record, when produced in the court-martial at Brooklyn, was there ruled out as unreliable evidence, but was used in detail against the objections of Messrs. Joseph H. Choate and E. B. Hinsdale, counsel for accused.

The charges and specifications on which Surgeon Kershner was tried and convicted are as follows:

(1) Violation of a lawful regulation issued by the Secretary of the Navy.

As to the first charge there are two specifications as follows:

Specification 1.—In that the said Edward Kershner, a medical inspector in the United States Navy, attached to and serving as such and as surgeon of the fleet on board the United States steamer *New York*, flagship of the North Atlantic station, having, on or about the twenty-fifth day of February, eighteen hundred and ninety-five, at Bridgetown, Barbados, had referred to him by Captain Robley D. Evans, United States Navy, commanding said vessel, for such statement to the commander in chief as he might deem necessary, a report made by the said Captain Evans to the commander in chief of the United States naval force on the North Atlantic Station, in the words and figures substantially as follows, to wit:

U. S. F. S. NEW YORK, 1ST RATE,  
*Bridgetown, Barbados, February 25, 1895.*

SIR: 1. I have the honor to report to you that a call from a Nova Scotia vessel lying a short distance ahead of us was received for medical assistance about 9 p. m. yesterday, the messenger stating that a man had been poisoned, and as the captain was on shore they appealed to us.

2. Medical Inspector Kershner objected to answering the call on the ground that they might have a case of yellow fever, and that it was their business to send on shore for a doctor whose practice it is to attend such cases, and furthermore that the captain would beat the owner by charging a doctor's fee for this case.

3. I suggested to Medical Inspector Kershner that this might be a case of urgent necessity, maybe of life and death, to which he replied that they should have sent on shore in the first place and not to us.

4. By your direction medical assistance was sent and the case proved to be a simple one.

5. The vessel was lying about four hundred yards from this ship.

Very respectfully,

R. D. EVANS,  
*Captain, U. S. Navy, Commanding.*

THE COMMANDER IN CHIEF,  
*U. S. Naval Force on North Atlantic Station.*

and the said Kershner having, on the same day, returned said report with substantially the following endorsement, to wit:

U. S. FLAGSHIP NEW YORK, 1ST RATE,  
*Barbadoes, Feb. 25, 1895.*

The sanitary advice given to Capt. Evans was as stated. One of the first and most important duties of my office, as I understand them, is the protection of the health and lives of the men and officers of the fleet. The advice given was in consonance with this understanding of my duties.

EDWARD KERSHNER,  
*Med. Insp., U. S. Navy.*

and the said Kershner having, on the same day, been furnished by the commander in chief with a copy of the endorsement made by said commander in chief on that

date, forwarding Capt. Evans's report, as above set forth, to the Department for such action as might be deemed necessary, which endorsement was in the words and figures substantially as follows, to wit:

U. S. FLAGSHIP NEW YORK, 1ST RATE,  
*Bridgetown, Barbadoes, February 25, 1895.*

Respectfully forwarded to the Department for such action as may be deemed necessary:

2. Sanitary advice is an excellent thing, and never to be disregarded when it is sound, but lack of ordinary humanity is not to be confounded with "sanitary advice."

3. Medical Inspector Kershner has, in my judgment, failed to realize the high standard required in a medical officer in his position. In point of fact, he has, I think, neglected his duties from the beginning. He failed to procure, before leaving New York, the necessary instruments to analyze the purity of air and water, and his advice since that time in regard to many matters connected with these things seems to be of a guesswork sort and of a querulous and timid character. He impresses me as a chronic fault-finder, without much cause for his complaints.

4. The medical profession is one of the noblest of the learned professions, and requires for its proper exercise courage and devotion, as well as the keenest observation, and I can not understand how a man occupying Dr. Kershner's position can hesitate for a moment to help a case of suffering, or demean himself by mere fault-finding and complaint; and I would suggest to the Department that a medical officer of less timid character and more zealous, more progressive, and up to date in his profession be substituted for Medical Inspector Edward Kershner as the surgeon of the fleet.

R. W. MEADE,  
*Rear-Admiral, U. S. Navy,*  
*Commanding U. S. Naval Force on North Atlantic Station.*

did, on or about the first day of March, eighteen hundred and ninety-five, forward, in a private letter, to Surgeon-General James R. Tryon, United States Navy, at Washington, District of Columbia, substantial copies of certain portions of the correspondence above referred to, to wit: The report of Captain Evans to the commander in chief, herein set forth; the first endorsement thereon by the commander in chief; his (Kershner's) endorsement herein set forth; a letter addressed to him, the said Kershner, by the commander in chief; and the second endorsement of the commander in chief, herein set forth, forwarding the correspondence to the Department, all of said papers and endorsements bearing date February twenty-five, eighteen hundred and ninety-five; this in violation of article two hundred and thirty-five, United States Navy Regulations, eighteen hundred and ninety-three.

Specification 2.—In that the said Edward Kershner, a medical inspector in the United States Navy, attached to and serving as such and as surgeon of the fleet on board the United States steamer *New York*, flagship of the North Atlantic station, having, on or about the twenty-fifth day of February, eighteen hundred and ninety-five, at Bridgetown, Barbados, had referred to him by Captain Robley D. Evans, United States Navy, commanding said vessel, for such statement to the commander in chief as he might deem necessary, a report made by the said Captain Evans to the commander in chief of the United States naval force on the North Atlantic station, in the words and figures substantially as follows, to wit:

U. S. F. S. NEW YORK, 1ST RATE,  
*Bridgetown, Barbadoes, February 25, 1895.*

SIR: 1. I have the honor to report to you that a call from a Nova Scotia vessel lying a short distance ahead of us was received for medical assistance about 9 p. m. yesterday, the messenger stating that a man had been poisoned, and as the captain was on shore they appealed to us.

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R. D. EVANS,  
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The COMMANDER IN CHIEF,  
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*Barbadoes, Feb. 25, 1895.*

The sanitary advice given to Capt. Evans was as stated. One of the first and most important duties of my office as I understand them is the protection of the health and lives of the men and officers of the fleet. The advice given was in consonance with this understanding of my duties.

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3. Medical Inspector Kershner has, in my judgment, failed to realize the high standard required in a medical officer in his position. In point of fact, he has, I think, neglected his duties from the beginning. He failed to procure, before leaving New York, the necessary instruments to analyze the purity of air and water, and his advice since that time in regard to many matters connected with these things seems to be of a guesswork sort and of a querulous and timid character. He impresses me as a chronic fault-finder without much cause for his complaints.

4. The medical profession is one of the noblest of the learned professions, and requires for its proper exercise courage and devotion, as well as the keenest observation, and I can not understand how a man occupying Dr. Kershner's position can hesitate for a moment to help a case of suffering or demean himself by mere fault-finding and complaint, and I would suggest to the Department that a medical officer of less timid character and one more zealous, more progressive and up to date in his profession, be substituted for Medical Inspector Edward Kershner as the surgeon of the fleet.

R. W. MEADE,  
*Rear-Admiral, U. S. Navy,*  
*Commanding U. S. Naval Force on North Atlantic Station.*

did, on or about the first day of March, eighteen hundred and ninety-five, forward, in a private letter, to Medical Director Delavan Bloodgood, United States Navy (retired), at Brooklyn, New York, substantial copies of certain portions of the correspondence above referred to, to wit, the report of Captain Evans to the commander in chief, herein set forth; the first endorsement thereon by the commander in chief; his (Kershner's) endorsement herein set forth; a letter addressed to him, the said Kershner, by the commander in chief, and the second endorsement of the commander in chief, herein set forth, forwarding the correspondence to the Department, all of said papers and endorsements bearing date February twenty-five, eighteen hundred and ninety-five; this in violation of article two hundred and thirty-five, United States Navy Regulations, eighteen hundred and ninety-three.

(2) Scandalous conduct tending to the destruction of good morals.  
As to the second charge there are two specifications as follows:

Specification 1. In that the said Edward Kershner, a medical inspector in the United States Navy, attached to and serving as such and as surgeon of the fleet on board the United States steamer *New York*, flagship of the North Atlantic station, having appeared before a duly and lawfully constituted naval court of inquiry convened by order of Rear-Admiral Richard W. Meade, United States Navy, the commander in chief of the United States naval force on the North Atlantic station, on board the said flagship *New York*, at Kingston, Jamaica, on the sixth day of April, eighteen hundred and ninety-five, and having been duly and lawfully sworn as a witness by the president of said court to tell the truth, the whole truth, and nothing but the truth, was interrogated in reference to the correspondence mentioned in the first specification of the first of these charges, and did then and there testify upon matters material to the inquiry then being made by the court in substance and effect as follows:

"Question. Please state your name, rank, and duty.

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"Answer. Edward Kershner, medical inspector U. S. Navy, attached to the *New York*.

"Question. Do you recognize the text or substance of this newspaper article or any part thereof? If so, as what?

"Answer. Yes; this is a correspondence of Captain Evans and Admiral Meade on a man of a Nova Scotia vessel.

"Question. Have you seen the original correspondence of which this is a printed copy?

"Answer. Yes.

"Question. Please state what persons, to your knowledge, saw the original or a copy of the letter you refer to or its endorsements, or both.

"Answer. I showed the original to Doctor Urie, Pay Inspector Beaman—I do not remember what other persons saw it. I showed it to several officers.

"Question. Can you mention the names of any other officers who saw it besides Passed Assistant Surgeon Urie and Pay Inspector Beaman?

"Answer. I think I showed it to Captain Russell; I think I showed it to Doctor Cook.

"Question. Did you show or send this letter or the endorsements thereon or a copy of either or both to any person, or allow it to be shown to any person not mentioned already in your evidence?

"Answer. No, sir; not that I remember.

"Question. Did you show or send this letter or the endorsements thereon or a copy of either or both to any person with a view to its publication in any paper or the expectation that it would with or without your direct or implied consent be published?

"Answer. I certainly did not. It was to my interest to conceal rather than to reveal the letter.

"Question. Do you know of anybody not already mentioned in your evidence having seen this letter or the endorsements or a copy thereof?

"Answer. I do not know of any others.

"Question. Do you know how this correspondence came into the possession of the press?

"Answer. I have not the slightest idea.

"Question. Do you know of any person having made a copy of any part of this correspondence?

"Answer. I made a copy of it for myself.

"Question. Has this copy or a copy thereof left your hands at any time?

"Answer. No; and I destroyed these about two weeks ago.

"Question. Do you know of anybody having had access to the original in such a way as to enable that person to make a copy thereof?

"Answer. I do not. No person could have taken any such copy except by opening my desk without my authority.

"Question. Have you detailed the contents of this letter to any person in conversation?

"Answer. No."

and the foregoing testimony having been read over to him by the judge-advocate of said court, he, the said Kershner, did state that he desired to amend his answer to the question

"Did you show or send this letter or the endorsements thereon or a copy of either or both to any person or allow it to be shown to any person not mentioned already in your evidence?"

by making the following addition to the answer:

"I sent a copy of some of the endorsement to the Navy Department;"

and the said Kershner being thereupon further interrogated before the court, did testify in substance and effect as follows:

"Question. Will you please state what part of the letter or its endorsements was copied by you and sent to the Department?

"Answer. The Admiral's endorsement.

"Question. To whom was this sent?

"Answer. I sent a copy of the main points in it to the Surgeon-General.

"Question. Did you send a verbatim copy of any part of this correspondence to the Surgeon-General?

"Answer. I sent a verbatim copy of the second endorsement signed by Rear-Admiral Meade.

"Question. Do you know whether the Surgeon-General has had a copy of the full correspondence?

"Answer. I do not.



"Question. Was the endorsement sent to the Surgeon-General officially or unofficially?"

"Answer. I forwarded it unofficially in a personal letter;"

and he, the said Kershner, well knowing that he had, on or about the first day of March, eighteen hundred and ninety-five, forwarded to the Surgeon-General of the Navy, at Washington, District of Columbia, substantial copies of the several reports, letters, and endorsements referred to in the first specification of the first of these charges, did state to said court that no copy of any part of said correspondence had left his hands at any time, except a copy of the second endorsement signed by Rear-Admiral Meade, and the said Kershner, well knowing that such his sworn testimony was false and intended to deceive, did thereby knowingly and wilfully violate the sanctity of the oath taken by him to tell the truth, the whole truth, and nothing but the truth; this to the scandal and disgrace of the naval service.

Specification 2.—In that the said Edward Kershner, a medical inspector in the United States Navy, attached to and serving as such and as surgeon of the fleet on board the United States steamer *New York*, flagship of the North Atlantic Station, having appeared before a duly and lawfully constituted naval court of inquiry convened by order of Rear-Admiral Richard W. Meade, United States Navy, the commander in chief of the United States naval force on the North Atlantic Station, on board the said flagship *New York*, at Kingston, Jamaica, on the sixth day of April, eighteen hundred and ninety-five, and having been duly and lawfully sworn as a witness by the president of said court to tell the truth, the whole truth, and nothing but the truth, was interrogated in reference to the correspondence mentioned in the second specification of the first of these charges; and did then and there testify, upon matters material to the inquiry then being made by the court, in substance and effect as follows:

"Question. Please state your name, rank, and duty.

"Answer. Edward Kershner, medical inspector, U. S. Navy, attached to the *New York*.

"Question. Do you recognize the text or substance of this newspaper article or of any part thereof? If so, as what?"

"Answer. Yes; this is a correspondence of Captain Evans and Admiral Meade on a man of a Nova Scotia vessel.

"Question. Have you seen the original correspondence of which this is a printed copy?"

"Answer. Yes.

"Question. Please state what persons to your knowledge saw the original or a copy of the letter you refer to or its endorsements, or both.

"Answer. I showed the original to Doctor Urie, Pay-Inspector Beaman—I do not remember what other persons saw it. I showed it to several officers.

"Question. Can you mention the names of any other officers who saw it besides Passed Assistant Surgeon Urie and Pay Inspector Beaman?"

"Answer. I think I showed it to Captain Russell; I think I showed it to Doctor Cook.

"Question. Did you show or send this letter or the endorsements thereon or a copy of either or both to any person, or allow it to be shown to any person not mentioned already in your evidence?"

"Answer. No, sir; not that I remember.

"Question. Did you show or send this letter or the endorsements thereon or a copy of either or both to any person with a view to its publication in any paper or the expectation that it would with or without your direct or implied consent be published?"

"Answer. I certainly did not. It was to my interest to conceal rather than to reveal the letter.

"Question. Do you know of anybody not already mentioned in your evidence having seen this letter or the endorsements or a copy thereof?"

"Answer. I do not know of any others.

"Question. Do you know how this correspondence came into the possession of the press?"

"Answer. I have not the slightest idea.

"Question. Do you know of any person having made a copy of any part of this correspondence?"

"Answer. I made a copy of it for myself.

"Question. Has this copy or a copy thereof left your hands at any time?"

"Answer. No; and I destroyed these about two weeks ago.

"Question. Do you know of anybody having had access to the original in such a way as to enable that person to make a copy thereof?"

"Answer. I do not. No person could have taken any such copy except by opening my desk without my authority.

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and the said Kershner, being thereupon further interrogated before the court, did testify in substance and effect as follows:

"Question. Will you please state what part of the letter or its endorsements was copied by you and sent to the Department?"

"Answer. The admiral's endorsement.

"Question. To whom was this sent?"

"Answer. I sent a copy of the main points in it to the Surgeon-General.

"Question. Did you send a verbatim copy of any part of this correspondence to the Surgeon-General?"

"Answer. I sent a verbatim copy of the second endorsement signed by Rear-Admiral Meade.

"Question. Do you know whether the Surgeon-General has had a copy of the full correspondence?"

"Answer. I do not.

"Question. Was the endorsement sent to the Surgeon-General officially or unofficially?"

"Answer. I forwarded it unofficially in a personal letter."

and he, the said Kershner, well knowing that he had, on or about the first day of March, eighteen hundred and ninety-five, forwarded to Medical Director Delavan Bloodgood, United States Navy (retired), at Brooklyn, New York, substantial copies of all the several reports, letters, and endorsements referred to in the second specification of the first of these charges, did state to said court that no copy of any part of said correspondence had left his hands at any time, except a copy of the second endorsement signed by Rear-Admiral Meade, which he had sent to the Surgeon-General of the Navy, and the said Kershner, well knowing that such, his sworn testimony, was false and intended to deceive, did thereby knowingly and willfully violate the sanctity of the oath taken by him to tell the truth, the whole truth, and nothing but the truth; this to the scandal and disgrace of the naval service.

#### THE COURT-MARTIAL.

Dr. Kershner was tried before a general court-martial at Brooklyn, N. Y., May 6, 1895, on the charges stated above.

To the committee it seems apparent that the purpose of article 235 of the Regulations for the Government of the Navy was to prevent the communication of criticisms upon the foreign policy of the United States and various other acts of officers of the Navy Department, and especially to prevent communicating news improperly to newspapers. It is charged that there were two communications made by the accused—one to his superior officer, the Surgeon-General, and the other to a retired medical inspector, an old personal friend of the accused, Dr. Bloodgood. The accused, while at sea, was suddenly and unexpectedly confronted with a letter from his superior officer, Admiral Meade, which reflected most severely and, as he considered, unjustly, upon his professional standing and character in the service. If it is conceded that there was a technical violation of this article, it does not seem to have been a serious matter or one that calls for severe punishment under the circumstances. It was an act committed, certainly, under great provocation, and, so far as the communication with Surgeon-General Tryon is concerned, a very hasty act. While it may

be necessary to maintain the discipline of the Navy, we respectfully suggest that, so far as this act was concerned, there is nothing in it, outside of the well-known practice of the officers of the Navy, calling for severe punishment or censure.

It is clear that the communications were not intended for publication, nor were they criticisms upon the act of anyone. They were letters defensive of his character and professional ability and were written for the purpose of defending the accused from what he conceived to be an unjust charge of the admiral, and for the purpose of seeking the advice of a life-long friend in an unexpected emergency while at sea.

No fair deduction from the evidence can lead to any other conclusion than that, at most, the accused was guilty of a technical violation of the article, without a bad motive.

The object of article 235, as is probably well known to all, is declared in the margin of the Navy Regulations to forbid the publication of official documents. It reads as follows:

All persons belonging to the Navy, or employed under the Navy Department, are forbidden to publish, or to cause or permit to be published, directly or indirectly, or to communicate by interviews, private letters, or otherwise, except as required by their official duties, any information in regard to the foreign policy of the United States, or concerning the acts or measures of any Department of the Government, or of any officer acting thereunder, or any comments or criticism thereon, or of any official instructions, reports, or letters upon any subject whatever, or to furnish copies of the same to any persons without the permission of the Navy Department.

No person belonging to the Navy, or employed under the Navy Department, shall act as correspondent of a newspaper without the express authority of the Department, or discuss matters pertaining to the naval service in the public prints, or attempt to influence legislation in respect to the Navy otherwise than through and with the approval of the Department.

Literally considered, that would prohibit any officer or any person belonging to the Navy or employed under the Navy Department from making communications, verbally or in writing, to anybody of anything that went on in the service. Your committee's construction of it is that it means exactly what it says in the heading, that it is intended to prevent any publication of official documents or official work.

Dr. Kershner had been, so far as your committee can ascertain from the evidence, performing his professional duty on board ship faithfully for thirty years up to the 24th day of February, 1895. Then arose this matter about the British bark in the vicinity which had called for medical assistance. He referred it to the captain, and the captain took his advice upon it that the applicant had better be referred for medical assistance to the doctors on shore.

That was referred immediately by word of mouth to the admiral, who seems to have had some little irritation with Dr. Kershner a few days before, and he gave peremptory order that such aid should be sent, and it was sent.

Dr. Kershner gave his view of his duty, and under the regulations to which we have referred, it seems to your committee that he acted not from any lack of humanity, but in pure prudence and in the intelligent discharge of his duty. It being then made the subject of a written report by the captain to the admiral, and being referred through the captain to the doctor for his written statement, he made the statement with which no mortal could reasonably find any fault, and we do not see why we should not commend what he said.

There came on the morning of the 26th, at half past 11 o'clock, to his very great surprise, the indorsement of Admiral Meade. Dr. Kershner or anybody else might very well be extremely indignant, as his testi-

mony says he was upon reading this indorsement. It is a pretty savage arraignment of a man who had committed no offense:

Respectfully forwarded to the Department for such action as may be deemed necessary. Sanitary advice is an excellent thing and never to be disregarded when it is sound, but lack of ordinary humanity is not to be confounded with "sanitary advice."

Medical inspector has, in my judgment, failed to realize the high standard required in a medical officer in his position. In point of fact, he has, I think, neglected his duties from the beginning. He failed to procure, before leaving New York, the necessary instruments to analyze the purity of air and water, and his advice since that time in regard to many matters connected with these things seems to be of a guesswork sort, and of a querulous and timid character. He impresses me as a chronic fault-finder, without much excuse for his complaints.

The medical profession is one of the noblest of the learned professions and requires for its proper exercise courage and devotion, as well as the keenest observation, and I can not understand how a man occupying Dr. Kershner's position can hesitate for a moment to help a case of suffering or demean himself by mere fault-finding and complaint, and I would suggest to the Department that a medical officer of less timid character and one more zealous, more progressive, and up to date in his profession be substituted for Medical Inspector Edward Kershner as surgeon of the fleet.

It is practically an arraignment of Dr. Kershner's career from the beginning and of his character throughout, and, as appears by the evidence, it was entirely unwarranted. However that may be, it undoubtedly did create great indignation and anger in the mind of Dr. Kershner, as is stated by him and as fully revealed in the subsequent letter that he wrote to Dr. Tryon, the Surgeon-General.

What did he do in the half hour before the sailing of the steamer, knowing of this document containing this statement?

Being a lifelong friend of Surgeon-General Tryon, who is in all medical matters the right arm of the Navy Department in Washington, Dr. Kershner sends him a carefully prepared copy of the indorsement and a hasty sketch of the other points mentioned in the papers, and, as it appears upon examination of the letter of the captain and of the first indorsement of the admiral, they were imperfect copies.

He had a perfect right to send a copy to Surgeon-General Tryon. The Revised Statutes declare that the Bureau of Medicine is one of the Bureaus, one of the integral parts of the Navy Department. The Surgeon-General has charge of it, and all these medical officers are supposed to be more or less under his direction and control.

The Surgeon-General himself testified that it is the usual thing for the medical officers to write him exactly as Dr. Kershner did. The Surgeon-General took it as a matter of course. Dr. Kershner's communication did not excite his surprise or in the least suggest to him that Dr. Kershner had committed any offense, or had done anything on which complaint could properly be made against him. All the medical officers in the Navy would have to be punished for that, for it appears they have all done it.

Your committee submits that the sending of copies of these papers by Dr. Kershner to Surgeon-General Tryon is all there is of consequence or importance in this case, and your committee is of opinion that Dr. Kershner had a perfect right to do it.

Dr. Kershner had an old friend in Brooklyn by the name of Blood-good, a venerable, gray-haired, experienced, life-long friend, and he sent him the main points.

**CHARGE II.**—Scandalous conduct tending to the destruction of good morals.

Under this charge there are two specifications, in substance alike. Both specifications will be treated together.

An examination of the precept of the Secretary of the Navy which



convened the court of inquiry discloses that the purpose of that inquiry was a single purpose.

Attached to the precept was a copy of an article that appeared in the New York Tribune, which professed to be copies of the official correspondence then on file in the Navy Department at Washington.

The inquiry was directed to the single point as to how that information reached the press. It seems absurd to assume that substantial copies of any or all of these articles that were not verbatim copies could by any possibility be the basis of the articles as they appeared in the press. A comparison of the papers sent to the Surgeon-General with the Tribune article shows that they were certainly not verbatim copies, but were only substantial copies at the most. For the purpose of publication the printer of necessity follows the copy furnished him. The purpose of the inquiry was to trace back, if possible, from the printed copy to the person who furnished the matter that was printed. The precept convening the court of inquiry does not call for anything other or different than copies of the Tribune articles.

The record of the court-martial shows that it was not without difficulty that the counsel for the accused was enabled to get from the witnesses on the part of the Government that instructions were given to the accused at the time he was sworn in the court of inquiry and explanations made to him that were not taken down in the record returned to the Navy Department.

It needs no argument to show that the explained purpose of the inquiry by the officers of the court of inquiry were essential to the full appreciation of the answers made by the accused. It is apparent that if the accused understood that he was asked if he had sent substantial copies, his answers would have been one way; and it is equally apparent that if the accused understood from the judge-advocate on that inquiry that he was only asked for verbatim copies, his answers would have been entirely different.

There was no written record taken at the time of the court of inquiry as to what verbal explanations were made to him as to the purpose of the inquiry. It is agreed by all of the witnesses on the part of the Government who were officers of the court of inquiry and by the accused that something was said, that some limitations were put upon him, not appearing in the record. All admit, and no doubt with entire honesty, that at the time of the hearing at the general court-martial they could not recall just what was said. All admit that Dr. Kershner made some explanations, or tried to make some explanations, when the court of inquiry was held that he was advised by the court were unnecessary and immaterial. All admit that he made statements that were not taken down, for that reason. The committee does not impugn the entire honesty and fairness of the court of inquiry in what it did take down. It undoubtedly understood the precept to be, as it was in fact, an inquiry to know if, through any act of Dr. Kershner, verbatim copies of the Tribune articles had been sent to the United States by the accused. With that understanding of the purpose of the precept, the officers of the court were perfectly justified in not taking Dr. Kershner's full explanation, and he, on the other hand, was justified in testifying, as he did, that he had not sent verbatim copies. His statement that he was restricted to verbatim copies is supported by Captain Russell (pages 255, 256, questions 32, 33, 34, 35, and 36); also by Captain Glass, who expresses the same opinion.

The statement alleged to have been false must have been material to the subject then under consideration, otherwise it does not amount to

the offense charged. No matter what or to whom Dr. Kershner had sent either the substance or substantial copies of the Tribune articles, if he did not send verbatim copies they could not have been used for the Tribune publication, and so the sending of such substantial matter was immaterial to the purpose of the inquiry.

There is another element of equal importance contained in the charge, that there must be willfulness and corruptness on the part of the affiant before he could have been found guilty thereof.

The party making the alleged false statement, in order to be adjudged guilty thereof, must, at the time of making the statement, believe the statement to have been false. This is an essential element, and unless this element is established the case absolutely fails. It is common experience that men make mistakes in the misapprehension of the force of a question or the purpose of an inquiry. Such mistakes are never classed as willful and intentional violation of an oath. Such is the infirmity of language and the infirmity of intellectual perceptions that it is a common, everyday experience, both among honorable men in the ordinary affairs of life and by honorable witnesses on the stand, that they make statements that require to be qualified and explained at some time. Unless there is a full appreciation and comprehension of the force and purpose of a question men will swear to things that they believe they know, when, upon cross-examination, it will turn out to be something different or only hearsay.

Such a mistake is not a violation of an oath or an unprovoked falsehood. Men may swear to things with the belief that a question is limited in some way, when perhaps the sequel of the matter will show that there were no such limitations on the question. Their answers may be false, yet there is not the element of intent to falsify in it. The authorities are numerous that illustrate and establish this principle.

Some minds are so constituted that they are technical and exact; others tend to generalize, and so both classes of intellects are prone to make statements that to other minds will seem not to be candid and truthful. To draw a conclusion of falsehood from such instances is to violate every known canon of law.

It is doubtful whether any case was ever tried where all the statements of the witness, or of any witness, were exactly true. It is doubtful whether any candid witness would not desire to change his testimony in some respects after he had time to consider it in all its aspects if such testimony involved a number of ideas.

It is apparent that the accused understood the questions that were propounded to him, as explained to him at the court of inquiry, and the answers that he gave, as limited to strict and exact verbatim copies of the Tribune article.

It was unjust to him in the court of inquiry, not intentionally unjust, to fail to take down the explanations or qualifications that it is conceded by all the witnesses he did make and tried to make to the court at the time. We apprehend and believe that here is the root of the whole difficulty. Those who have known the accused for many years claim that he is incapable of committing perjury knowingly or willfully.

It is apparent that if a questioner at the court of inquiry approached the subject of inquiry from one point of view and the Doctor understood it from another point of view, that their minds did not meet as to the force of the question or the significance of the answer.

The record discloses that the matter taken down was limited to just such matter as the court and judge-advocate upon the inquiry deemed material to the subject of inquiry. This record discloses that many statements made by the judge-advocate and by the court to Dr. Kersh-

ner and many statements made by Dr. Kershner were not written down. At the court-martial the witnesses on behalf of the Government admitted with entire frankness and freedom that they could not recall either the words or the substance of what was said in the court of inquiry not taken in the record. This appears through the entire testimony of Lieut. H. P. Huse when examined in chief and also on the cross-examination. His entire failure of memory is illustrated by the testimony on pages 33 to 40, and on the cross-examination, pages 53 to 58. It seems incredible that this witness should have answered as he did on page 58, indicating that Dr. Kershner was hardly talking intelligently about the subject of inquiry. It is clear that one of these actors in this scene had one line of ideas in his mind and the other had another.

On page 59 this witness was finally brought to acknowledge that the inquiry was limited by reason of the instructions given to Dr. Kershner to simple verbatim copies. The testimony of Capt. Henry Glass, beginning at page 141, shows the same defect of memory as that shown by Lieutenant Huse as to what did occur before the court of inquiry.

On page 147 this witness says that "Dr. Kershner had certain questions put to him which he answered, and then occasionally amplified the answer." On page 148 the subject of amplification of the answer was again testified to and is spoken of as generally almost like a conversation. All of it was not taken down.

This witness, on page 161, in answer to the question No. 168, at first denied any recollection of the word "verbatim" being used in connection with the inquiry. When confronted with the record of the court of inquiry in question 122 of the same page, he had to admit that it was used, and that his former answer, given only a few minutes before, was not true.

It is not possible nor desirable to quote all the testimony bearing upon the point made that the record of the court of inquiry was a most imperfect and unfortunately unfair transcript of the proceeding in that court. There is no intention to reflect upon the absolute integrity of the members of the court, but from want of experience in such matters they evidently in their conversation with the accused, and in their instructions to him, had conducted his mind to the belief that he was answering in one strict line, and they on their part clearly took down what they believed to be essential on this strict line. They rejected any explanations that were made by Dr. Kershner without appreciating the significance or importance of them. When called for examination before the general court-martial, their recollection was extremely hazy, imperfect, and altogether at fault as to what did occur at the court of inquiry. No one experienced in such matters for one moment can justly reflect upon them for the incomplete and unsatisfactory testimony they gave at the time of the court-martial. They were called to the court of inquiry out of their ordinary duties to perform a duty which they were not familiar with. It was hastily executed, and naturally the substance of everything not written would fade from their minds. Such is the more common experience of men engaged in the active affairs of life. It is unfortunate for Dr. Kershner that the actual record did not contain a true transcript of what the officers and members of the court of inquiry said and what the accused said. It should be borne in mind that the precept to the court of inquiry contained these significant words:

The court will diligently and thoroughly inquire into the circumstances connected with the publication of this matter, and upon the conclusion of that investigation will report.

We respectfully suggest that the court martial fell into a number of grave errors in their rulings when the counsel for the accused was endeavoring to develop fairly this feature of the case. They were met by the objections of the judge-advocate, which objections were almost uniformly sustained, so that this important branch of the case was not explored by the counsel for the accused, nor could it be under the rulings of the court-martial. Such rulings in a civil court would be a subject of review under objections and exceptions, and in our judgment would have been fatal errors to any record of the trial which resulted in a conviction.

The following instances illustrate the errors of the court-martial evidence, pages 61-63 and pages 74-75 and 151.

The former record of the accused in the service of his country and his long and varied duties as an officer of the Navy should weigh in favor of the accused; statements as to his understanding of the purport of the question addressed to him on the court of inquiry. In all civil and criminal courts a lifelong character weighs heavily against a charge of criminal conduct, especially where the gravamen of the charge is one of evil intent in the mind of the accused. Courts and executive officers have always given great weight to this consideration in such cases. That Dr. Kershner has performed exceptionally good service for the Government through a long series of years is shown by the record in this case. While it is true that such record was made out by his own testimony, giving the narrative of his life, it stands undisputed and is unquestionably true in every detail. Other evidence would have been produced except that it was indicated to his counsel that no attempt would be made to dispute the fact of his honorable career, and they deemed it unwise to consume the time of the court or encumber the record by simply cumulative evidence.

No fair-minded man can desire to see an officer with such a record behind him stricken down and his whole future life blackened by the infliction of the severe punishment and the severe judgment pronounced by the court-martial.

#### STATEMENT OF DR. KERSHNER'S CAREER.

Edward Kershner, on the 2d day of September, 1861, entered the service of the United States as an assistant surgeon in the Navy from Maryland. His first active service was on the U. S. sloop of war *Cum-berland*, in Hampton Roads, and he was on duty there at the time of the sinking of the ship, going down into the water with her, and was rescued from the water in an unconscious condition by one of the marines. The officer at the time in command of the ship was Lieut. George U. Morris. The commanding officer in his report to the Department, among other things, stated:

Among the last to leave the ship were Surgeon Martin and Assistant Surgeon Kershner, who did all they could for the wounded promptly and faithfully.

For this action the officers and crew received the thanks of Congress. After the engagements were over in Hampton Roads, his next duty was taking Captain Worden, who was wounded on the *Monitor*, to Washington. He gave to the Government the first detailed information of the actions in Hampton Roads. For a few months after that he was in service at the Washington Navy-Yard. His next service was on the *New Ironsides*, which ship was in service at Hampton Roads and in the siege of Charleston. He was on that ship at the first attack on Charleston, April 7, 1863, and the subsequent operations. Was



ordered to the U. S. monitor *Passaic* in February, 1864, on same duty. Later was ordered to the U. S. S. *Choctaw*, an ironclad ram in the Mississippi Squadron, and remained there until the end of the war, in 1865. Then, after a few months at the rendezvous at Philadelphia, he was ordered to the *Tacony*, of the North Atlantic Squadron, which vessel cruised along the coast of North Carolina and down to Florida. After that he was ordered to the *Osceola* on a cruise to the West Indies, and remained on board that vessel about one year. It was the only vessel of the squadron that did not lose men by yellow fever, the admiral and many officers and men dying. This was accomplished by skill and care in the exercise of sanitary laws. He was then ordered to the receiving ship *Potomac* at Philadelphia, where he treated an epidemic of cholera on board ship.

At that time he had attained the rank of passed assistant surgeon, and the rank of surgeon was conferred on him in 1872, and that of medical inspector in 1890. His next service was on the receiving-ship *Vermont*, at Brooklyn Navy-yard, and soon thereafter was ordered to the *Richmond*, on the European station, where he remained for about three years. His next service was at the New York naval hospital, when he had charge of the smallpox hospital. He was next ordered to service on the *Vermont*, and from there to the U. S. S. *Suvarov*, on the Transit of Venus expedition to the Indian Ocean and Australasia. He acted as assistant photographer, and also made a natural history collection, besides doing the medical and surgical work of the expedition. The natural history collection he made at that time was sent to the Smithsonian Institution, and for it he received the thanks of the institution. Upon the return of that expedition to New York he was continued as surgeon of the ship during the three years' cruise to South America and West Indies. After his return from that cruise, for a time he attended officers of the Navy in New York and Brooklyn.

He was next, in 1877, assigned to the U. S. training ship *Minnesota*, and remained in that service for about three years. After some special duty in the city of New York, his next duty was on the U. S. S. *Omaha*, flagship of the Asiatic station, where he had to deal with another epidemic of cholera which prevailed severely over China and Japan. He was fleet surgeon of the Asiatic station for about one year, and on returning to the United States was surgeon of the New York marine rendezvous and New York Navy-yard for a period of about three years. After that he was assigned to service on the cruiser *New York*, and entered upon the discharge of duty upon the ship August 1, 1893. He has been professor of hygiene and emeritus professor in the New York Post-graduate Medical School and Hospital during the past fifteen years, and now holds that position.

The cruiser *New York* was ordered to Rio Janeiro as one of the vessels sent by this Government to that port at the time of the Brazilian rebellion. The commander was Capt. John W. Philip. There was an epidemic of yellow fever at Rio, as it was the hot season. The disease prevailed upon all the foreign men of war in the port—about thirty in number. The *New York* was kept entirely free from the fever by great care and by scientific sanitary precautions under the charge of Dr. Kershner.

After the difficulties in Brazil were settled the squadron was ordered to New York, and after fitting out again was ordered upon a cruise in the West Indies, Rear-Admiral Meade in command of the squadron. Before the squadron left New York Dr. Kershner was appointed fleet surgeon. The flagship *New York* left New York about January 10,

1895, for a cruise among the Windward Islands, where yellow fever was reported to prevail, and then entered the harbor of St. Lucia. Fleet Surgeon Kershner had heard that yellow fever prevailed there, and afterwards ascertained it to be a fact. While at that port he objected, on sanitary grounds, to the use of the water, for fear of introducing the yellow fever on the ships. Rear-Admiral Meade was considerably disturbed by his decision on that question, and their relations became somewhat strained by reason of the difference of opinion between the admiral and captain and the fleet surgeon touching the quality of the water. This trouble finally culminated in the report of Meade against Dr. Kershner.

Since entering civil life, in 1896, he has passed the civil-service examination in New York City for General Inspector of hospitals, Charity Department, and was placed No. 2 on the eligible list; also civil-service examination for Medical Chief of staff, and received the appointment as such at Infants' Hospital, Randalls Island, New York, where he had full charge, as superintendent, of 1,200 patients, and where his services were fully satisfactory to the city officials. He was afterwards transferred to the Almshouse Hospital, Blackwells Island, as Medical Chief of staff, 600 patients.

Dr. Kershner is and has long been a member of the Union League Club, New York, New York Academy of Medicine, Loyal Legion, Grand Army of the Republic, Masonic fraternity, and Society of the Nineteenth Army Corps.

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